PENSION MANAGEMENT OVERSIGHT COMMISSION

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MEETING MINUTES[1]

Meeting Date: October 19, 2009
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. Phil Boots, Chairperson; Sen. R. Michael Young; Sen. Robert Deig; Sen. Karen Tallian; Rep. David Niezgodski; Rep. Woody Burton; Rep. Suzanne Crouch; Matthew Buczolich; Kip White; Steve Meno; Randy Novak.

Members Absent: Rep. Ed DeLaney.

Senator Phil Boots, Chairperson, called the meeting of the Pension Management Oversight Commission (Commission) to order at 1:00 p.m..

Status Report Concerning the Implementation of SEA 478-2009 (P.L.164-2009) Involving Improper Worker Classification

Sean Keefer, Deputy Commissioner of the Indiana Department of Labor (DOL), provided a brief update on the implementation of SEA 478, which requires the DOL, the Department

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of State Revenue, the Worker's Compensation Board, and the Department of Workforce Development to cooperate by sharing information concerning any suspected improper worker classification by a contractor in the construction industry.

DOL is reaching out to the other state agencies to implement the legislation. DOL's activities include identifying contacts in each agency, developing a data base for the referral of information about suspected misclassifications, and developing protocols to protect the confidentiality of the shared information. Mr. Keefer would not agree that the agencies have resisted implementation of the information sharing system, but there have been issues because each agency defines worker misclassification slightly differently. He suggested that at some point the General Assembly may need to make a policy decision as to what misclassification means.

Mr Keefer was not certain that assessing an employer additional fees or penalties would help prevent worker misclassification. The Department of State Revenue already has penalties for misfiling, and Mr. Keefer questioned what else could be done.

SEA 501-2007 Retirement Medical Benefits Account Update

Christopher Ruhl, Director of the Indiana State Budget Agency, presented the annual update on the implementation of the Retirement Medical Benefits Account (Account) (Exhibit 1). Mr. Ruhl briefly reviewed the history and operation of the Account. The Account was established in 2007 by SEA 501-2007 for all state employees, including members of the General Assembly.

Each full-time active state employee is credited annually with a contribution. The amount of the contribution depends upon the employee's age. Only a retired participant and covered dependents are entitled to receive benefits from the Account. The Account may be used to pay premiums for individual or group health, medical, dental, and vision coverage, and for long-term care premiums.

Participants retiring after June 30, 2007, and before July 1, 2017, receive a bonus contribution at retirement, if the participant:

(1) served 10 years as an elected officer, or 15 years in any other state position; and

(2) is eligible for and has applied to receive a normal, unreduced retirement benefit from a public retirement fund.

The amount of the bonus contribution is the participant's years of state service multiplied by $1,000.

The State Budget Agency has undertaken various communication and outreach efforts to educate state employees about the Account, including information sessions, an annual statement of contributions and investment earnings, and a dedicated website.

For FY 2009, the following facts and figures applied to the Account:

- 1,977 retired participants and 33,518 active employees.
- The average contribution was $1,096.
- The average Account total for a participant at retirement was $26,819.
- Claims totaled $3,304,613 in FY 2009, and about $4 million over the last two fiscal years.
- $532,952 in credited investment earnings.
- $199,324 in administrative costs. Key Benefits is the Account administrator.

Mr. Ruhl pointed out that the number of retirements in FY 2009 doubled from the prior year (from 600 to 1,200), but the increase was primarily driven by employee fear that the Account might be terminated. He also noted that it is difficult to find evidence that the program has generated additional or more retirements than would have occurred without the Account.

Mr. Ruhl next reviewed the fiscal impact of the Account. For FY 2009, the cost of the program was about three times the amount of the funding. The general fund appropriation was $23 million from the cigarette tax. The total actual cost was $67.5 million, broken down as follows:

- $36.7 million for annual contributions.
- $33.6 million for bonus contributions.
- Minus $3.1 million in reversions from individuals who left state employment before full retirement.

The state also incurs an actuarial unfunded liability that must be reported under GASB 45. The liability occurs because the General Assembly in 2008 allowed retirees to use the Account to purchase coverage in the state's self insured health plans. Claim expenses for retirees are significantly greater than the premiums they are charged, creating an implicit subsidy that is paid by the state and active employees through higher premiums. The implicit subsidy is currently estimated at a $65 million unfunded liability, which would require an additional $7.5 million per year to actuarially fund.

Recent changes to the Account's operation include the creation of a dedicated trust fund to hold the general fund appropriations to the Account and an increase from $23 million to $28 million in the annual appropriation from the cigarette tax. However, the Account still has a $40 million funding gap. Eliminating or reducing contribution levels was proposed during the last legislative session, but the General Assembly maintained the current contribution levels in HEA 1001(ss)-2009.

The state is addressing the $40 million funding gap by charging dedicated fund agencies based on the number of Account participants each has. A reserve used to pay health insurance costs was also tapped, but funding of the reserve has been reduced by two-thirds for the current biennium. Cost remains the biggest challenge. Elimination of the bonus contribution would help a little.

Section 401(h) Account Update

Kathryn Cimera, General Counsel for the Public Employees' Retirement Fund (PERF), presented an update concerning the Section 401(h) account administered by PERF. In July 2007, PERF submitted a request for approval of the Section 401(h) account to the Internal Revenue Service (IRS). The IRS informed PERF that, because the request had been submitted "off-cycle", the IRS would not review it until after the IRS completed consideration of all "on-cycle" requests.

In January 2009, PERF submitted its "on-cycle" qualification request, and as part of that request, asked the IRS to consider the earlier submission concerning the Section 401(h) account as a part of PERF's "on-cycle" filing. The IRS has not yet assigned an agent to review PERF's filing.

PERF also issued a Request for Proposals for an account administrator and selected Nyhart and Company to administer the Section 401(h) account when it is implemented.

Consideration of Preliminary Drafts

(A) Indiana State Teachers' Retirement Fund (TRF) and PERF Issues

(1) PD 3082 - Withdrawal of Annuity Savings Accounts

The Commission unanimously recommended Preliminary Draft (PD) 3082 (Exhibit 2) for introduction in the 2010 session of the General Assembly. PD 3082 allows certain PERF and TRF members to elect to withdraw the member's annuity savings account, if the member has separated from employment and has not been employed in a covered position for at least 30 days.

(2) PD 3134 - Removal of Treasurer of State From Certain Funds Administered by PERF

The Commission reviewed PD 3134 (Exhibit 3), which eliminates references to the Treasurer of State's duties for the following pension funds administered by PERF:

- Legislators' Retirement System.
- Judges' Retirement System.
- Prosecuting Attorneys Retirement Fund.
- 1977 Police Officers' and Firefighters' Retirement and Disability Fund (1977 Fund).

David Larson, representing the Indiana State Employees Association (ISEA), spoke in opposition to the proposal. The Commission did not take any action concerning PD 3134.

(3) PD 3137 - Designation of PERF and TRF Benefits to Beneficiaries

The Commission unanimously recommended PD 3137 (Exhibit 4) for introduction in the 2010 session of the General Assembly. PD 3137 authorizes PERF and TRF to adopt rules to allow a member who designates more than one beneficiary to allocate benefit shares in percentage increments. Mr. Larson, representing ISEA, spoke in support of the proposal.

(4) PD 3135 - TRF Employer Contributions

The Commission reviewed PD 3135 (Exhibit 5), which reduces from 30 to 15 the number of days after a deadline during which a school corporation, township, or institution may submit a late report or payment to TRF without incurring a fine.

In response to questions from Commission members, Tom Davidson, TRF General Counsel, explained why TRF believes the change is necessary. TRF is upgrading its processes and needs to credit contributions to TRF individual member accounts faster than it does now. He said that each year about a half a dozen school corporations pay contributions late.

Nancy Papas, representing the Indiana State Teachers' Association (ISTA), testified in support of the proposal, but asked for sensitivity to the fact that the state is the source of school operating funds, so that if funding for TRF payments is late or possibly eliminated, compliance with the proposal might be impossible. Representative Niezgodski indicated that the proposal should take into account Ms. Papas' concerns.

Senator Tallian proposed that the Commission's final report include a recommendation that the Commission recognizes TRF's need to address this issue without the Commission taking any action on PD 3135 now. The Commission unanimously adopted the recommendation proposed by Senator Tallian.

(5) PD 3131 - TRF Statute of Limitations

The Commission reviewed PD 3131 (Exhibit 6), which requires a TRF member to petition the TRF board to correct an error in the determination of the member's creditable service or benefit not later than one year after the determination.

Andy Thomas, representing the Indiana Retired Teachers' Association, expressed concerns with the proposal. He suggested that a one year statute of limitations is too harsh and pointed out that the private sector has a ten year statute of limitations for contract issues.

Ms. Cimera pointed out that PERF already has a one year statute of limitations in this situation.

Bill Murphy asked how far TRF goes back when collecting overpayments. He suggested that the same time period should apply to requests for benefit corrections.

Ms. Papas expressed ISTA's concerns about a one year statute of limitations.

The Commission did not take any action concerning PD 3131.

(B) Public Safety Issues

(1) PD 3166 - Partial Lump Sum Distribution For Members of the 1977 Fund

The Commission unanimously recommended PD 3166 (Exhibit 7) for introduction in the 2010 session of the General Assembly. PD 3166 allows an active member of the 1977 Fund who is eligible to receive an unreduced retirement benefit to elect to receive, at retirement, a partial lump sum distribution equal to the member's monthly benefit times the member's years of creditable service in exchange for an actuarially reduced monthly benefit.

Tom Miller, representing the Professional Firefighters' Union, spoke in support of PD 3166.

(2) PD 3070 - 1977 Fund Cost of Living Adjustment

The Commission unanimously recommended PD 3070 (Exhibit 8) for introduction in the 2010 session of the General Assembly. PD 3070 provides that the monthly retirement benefit received by a 1977 Fund member may not be decreased by an annual cost of living adjustment.

(3) PD 3136 - 1977 Fund Testing Requirements

The Commission unanimously recommended PD 3136 (Exhibit 9) for introduction in the 2010 session of the General Assembly. PD 3136 requires the PERF board, one time before January 1, 2015, and every five years thereafter, to evaluate the statewide physical and mental examination standards used by the 1977 Fund.

Tom Miller, representing the Professional Firefighters' Union, expressed support for the proposal.

(C) Wage Claims

Senator Tallian reported agreement among the various groups interested in this topic that administrative exhaustion should not be required before an employee files a wage claim. However, she does not have a bill draft to present to the Commission at this time. She also asked that the Commission's final report include a statement supporting the agreement that administrative exhaustion should not be required. The Commission did not take action on Senator Tallian's request.

Providing a State Contribution for a Magistrate to Transfer PERF Service Credit to the 1985 Judges' Retirement System

Doug Todd, Senior Actuary, McCready and Keene, Inc., actuary for the Judges' Retirement System, reported on the cost of transferring magistrates' PERF service credit to the 1985 Judges' Retirement System (Exhibit 10).

Mr. Todd based his analysis on PD 3073 (Exhibit 11), which allows a magistrate to transfer PERF service by paying an amount equal to the six percent contribution rate established for the 1985 Judges' Retirement System with an offset for the amount in the magistrate's PERF annuity savings account. PD 3073 also provides that the state contribute to the 1985 Judges' Retirement System the remaining amount determined necessary to amortize the magistrate's PERF service liability over a period not to exceed ten years with an offset equal to the present value of the magistrate's PERF retirement benefit. By contrast, current law requires the magistrate to pay the full actuarial cost for the transferred PERF service. That makes the transfer prohibitively expensive for most magistrates, especially those near retirement with a large amount of PERF service credit.

If PD 3073 were enacted and all eligible PERF service credit was transferred to the Judges' Retirement System, Mr. Todd estimated the following impacts on the Judges' Retirement System:

- A net total increase in the unfunded accrued liability of $13.7 million.
- A 2.7% decrease in the funded status, from 69.3% to 66.6%.
- An annual state contribution of $ 1.8 million to amortize the PERF service liability over 10 years.

The savings to PERF from the transfer were estimated as follows:

- A decrease of $2.1 million in the unfunded accrued liability.
- A decrease of $428,896 in annual funding.

Mr. Todd also estimated that the total projected benefit payments to magistrates from the Judges' Retirement System resulting from the transfer would increase from $151,739 in 2011 to $1,546,411 in 2018 with continuing increases thereafter.

In response to questions from Commission members, Mr. Todd explained the differences between a PERF retirement benefit and a Judges' Retirement System retirement benefit. He also estimated the increase in court fees necessary to fund the state's contribution to the Judge's Retirement System for the transfer of the magistrates' PERF service credit to be $1.50 - $1.75.

Amy Flack, representing the Indiana Judges Association, expressed the Association's appreciation that the Commission is looking at funding for the transfer of PERF service credit for older magistrates.

The Commission unanimously adopted Representative Niezgodski's suggestion that the Commission's final report include a recommendation for continued study of this issue.

Consideration of Final Report

The Commission voted unanimously to approve the draft final report (Exhibit 12) with the addition of information from today's meeting.

Adjournment

The Chairperson adjourned the meeting at 2:15 p.m.